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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

DEPARTMENT OF STATE

Office of the Secretary

Exercise of Authority under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act

AGENCIES: Office of the Secretary, DHS; Office of the Secretary, DOS.

ACTION: Notice of determination.

Authority: 8 U.S.C. 1182(d)(3)(B)(i)

Following consultations with the Attorney General, the Secretary of Homeland Security and the Secretary of State have determined that the grounds of inadmissibility at section 212(a)(3)(B) of the Immigration and Nationality Act (INA), 8 U.S.C.

1182(a)(3)(B), bar certain aliens who do not pose a national security or public safety risk from admission to the United States and from obtaining immigration benefits or other status. Accordingly, consistent with prior exercises of the exemption authority, the Secretary of Homeland Security and the Secretary of State, in consultation with the Attorney General, hereby conclude, as a matter of discretion in accordance with the authority granted by INA section 212(d)(3)(B)(i), 8 U.S.C. 1182(d)(3)(B)(i), as amended, as well as the foreign policy and national security interests deemed relevant in these consultations, that paragraphs 212(a)(3)(B)(iv)(VI)(bb) and (dd) of the INA, 8 U.S.C. 1182(a)(3)(B)(iv)(VI)(bb) and (dd), shall not apply with respect to an alien who provided limited material support to an organization described in section 212(a)(3)(B)(vi)(III) of

the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(III), or to a member of such an organization, or to an individual described in section 212(a)(3)(B)(iv)(VI)(bb) of the INA, 8 U.S.C.

1182(a)(3)(B)(iv)(VI)(bb), that involves (1) certain routine commercial transactions or certain routine social transactions (i.e., in the satisfaction of certain well-established or verifiable family, social, or cultural obligations), (2) certain humanitarian assistance, or (3) substantial pressure that does not rise to the level of duress, provided, however, that the alien satisfies the relevant agency authority that the alien:

- (a) is seeking a benefit or protection under the INA and has been determined to be otherwise eligible for the benefit or protection;

- (b) has undergone and passed all relevant background and security checks;

- (c) has fully disclosed, in all relevant applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of any material support provided and any other activity or association falling within the scope of section 212(a)(3)(B) of the INA, 8 U.S.C. 1182(a)(3)(B), as well as all contact with a terrorist organization and its members;

- (d) has not provided the material support with any intent or desire to assist any terrorist organization or terrorist activity;

- (e) has not provided material support (1) that the alien knew or reasonably should have known could directly be used to engage in terrorist or violent activity or (2) to any individual who the alien knew or reasonably should have known had committed or planned to commit a terrorist activity on behalf of a designated terrorist organization, as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II);

(f) has not provided material support to terrorist activities that he or she knew or reasonably should have known targeted noncombatant persons, U.S. citizens, or U.S. interests;

(g) has not provided material support that the alien knew or reasonably should have known involved providing weapons, ammunition, explosives, or components thereof, or the transportation or concealment of such items;

(h) has not provided material support in the form of military-type training (as defined in section 2339D(c)(1) of title 18, United States Code);

(i) has not engaged in any other terrorist activity, including but not limited to providing material support to a designated terrorist organization, as described in section 212(a)(3)(B)(vi)(I) or (II) of the INA, 8 U.S.C. 1182(a)(3)(B)(vi)(I) or (II), to which no other exemption applies;

(j) poses no danger to the safety and security of the United States; and

(k) warrants an exemption from the relevant inadmissibility provision in the totality of the circumstances.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE), or by U.S. consular officers, as applicable, who shall ascertain, to their satisfaction, and in their discretion, that the particular alien meets each of the criteria set forth above.

This exercise of authority may be revoked as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above can inform but shall not control a

decision regarding any subsequent benefit or protection applications, unless such exercise of authority has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority creates no substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with section 212(d)(3)(B)(ii) of the INA, 8 U.S.C. 1182(d)(3)(B)(ii), a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security or by the U.S. Department of State, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Jeh Charles Johnson,
Secretary of Homeland Security.

John F. Kerry,
Secretary of State.

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